IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.MC.No. 3544 of 2007()

CC.108/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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PETITIONER: ACCUSED 1 & 2

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1. BIJU M.ELIAS, S/O.ELIAS YOHANNAN,
   MERSON COTTAGE, CHERUPUNJA, PERINGANAD P.O.,
   ADOOR.

2. JOHNSON.A., S/O.ELIAS YOHANNAN,
   MERSON COTTAGE, CHERUPUNJA,
   PERINGANAD P.O., ADOOR.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3544 of 2007

Dated this the 26th day of November, 2007

O R D E R

Petitioners face indictment in a prosecution for offences punishable, inter alia, under Section 326 I.P.C. The petitioners were not available for trial. The co-accused who faced trial were found not guilty and acquitted by the trial court. Case against the petitioners has been split up. Coercive processes have been issued against the petitioners by the learned Magistrate.

2. The petitioners have come to this Court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioners. What are the reasons ? The learned counsel for the petitioners contends that in the trial against the co-accused certain findings have been entered into, which must reveal to the court that further prosecution in this case would be unnecessary and a sheer waste of time. In as much as there is no possibility of anything productive coming out of this prosecution now, the further proceedings may be quashed by invoking the powers under Section 482 Cr.P.C, submits the learned counsel for the petitioners.

3. The decision in [**Moosa v. Sub Inspector of Police** [2006 (1) KLT 552 (F.B)] makes the position crystal clear. The hostility of

some of the witnesses and the consequent acquittal of the co-accused who faced trial are no reason for an absconding co-accused to claim any benefit or advantage. The petitioners must surrender before the learned Magistrate and take part in the proceedings. If they are so entitled, they can certainly claim discharge under Section 239 Cr.P.C. I am not persuaded to agree that there is any merit or justification in the prayer for invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C.

4. The learned counsel for the petitioners submits that warrants of arrest are pending against the petitioners. The petitioners are willing to surrender before the learned Magistrate and seek regular bail. But they apprehend that their application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 482 Cr.P.C may be issued in favour of the petitioners.

5. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law

and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-